

## **CHAPTER IV. DEFENDER ORGANIZATIONS**

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## CHAPTER IV. DEFENDER ORGANIZATIONS

- 4.01 A. Statutory Authority. Subsection (g) of the Criminal Justice Act, as amended, is intended to provide an option for the establishment of a public defender organization or community defender organization. A district, or part of a district in which at least two hundred persons annually require the appointment of counsel, may establish a defender organization. Two adjacent districts or parts of districts may aggregate the number of persons required to be represented to establish eligibility. If an eligible court desires to provide for representation by a public defender organization or a community defender organization as provided under subsection (g), the court will be guided by the provisions of subsection (a) of the Criminal Justice Act which provides that each district court shall place in operation its own plan for furnishing representation under the terms of the Act, after the approval of the plan by the judicial council of the circuit and pursuant to rules and regulations established by the Judicial Conference of the United States. It is intended that all provisions of the Act shall be administered efficiently and economically. Subsection (g) is intended to provide an option in the plan for the establishment of a public defender organization or community defender organization. Only one such organization should be approved for any district or part of a district in the absence of a clearly demonstrated showing of the need and feasibility of more than one such organization. It is the sense of the Conference that competitive organizations in the area should be avoided. The statute clearly provides that there shall be only one public defender for any district.
- B. Judicial Conference Policy. The Judicial Conference has recommended that the Criminal Justice Act be amended to: 1) eliminate the requirement that a district receive at least 200 CJA appointments annually in order to qualify for the establishment of a Federal Public Defender Organization or a Community Defender Organization; and, 2) require that a Federal Public Defender Organization or Community Defender Organization be established in all judicial districts, or combination of districts, where such an organization would be cost effective, where more than a specified number of appointments is made each year, or where the interests of effective representation otherwise require establishment of such an office.

#### 4.02 Types of Defender Organizations

##### A. Federal Public Defender Organizations.

- (1) In General. The organization shall consist of one or more full-time salaried attorneys. The Federal Public Defender shall be appointed by the Court of Appeals for a term of four years unless sooner removed. Upon the expiration of the term a Federal Public Defender may, by a majority vote of the judges of the court of appeals, continue to perform the duties of the office until a successor is appointed, or until one year after the expiration of such Defender's term, whichever is earlier.
- (2) Appointment of Federal Public Defender Organization Staff. The Federal Public Defender may appoint full-time attorneys in such number as may be approved by the court of appeals of the circuit and other personnel as approved by the Director of the Administrative Office of the United States Courts. The Federal Public Defender and his staff shall be subject to the provisions of sections 2104 and 2105 of title 5, United States Code.
- (3) Compensation of Federal Public Defender and Staff. The court of appeals of the circuit shall fix the compensation of the Federal Public Defender at a rate not to exceed the compensation received by the United States Attorney for the same district. In determining the rate of compensation of the Federal Public Defender, the court of appeals will take into account the size of the office, the number of employees required and the responsibilities of the public defender and his staff as compared with the same requirements and responsibilities of the United States Attorney and his staff.

The Federal Public Defender shall fix the compensation of assistant defenders and other personnel, at a rate not to exceed that paid to attorneys and other personnel of similar qualifications, experience, and responsibilities in the office of U.S. Attorney for the same district.

- (4) Appointment of a Committee to Assess the Qualifications of Candidates for the Position of Federal Public Defender and of the Federal Public Defender for Reappointment. In view of the intent of Congress to insulate the Federal Public Defender from the involvement of the district court before which the Defender principally practices, the recruitment and screening of candidates for the office of Federal Public Defender and the evaluation of Federal Public Defender performance prior to reappointment should be a function of the court of appeals rather than the district court. In carrying out this responsibility, the chief judge of the circuit should appoint a committee to assess the performance and potential for future performance of the Federal Public Defender candidates or incumbent Federal Public Defender. The committee should consist of persons knowledgeable in federal criminal defense issues, but should not include probation, pretrial services, enforcement or prosecutorial personnel.
- (5) Appointment of the Federal Public Defender. In recruiting and selecting candidates for the office of Federal Public Defender, the committee should seek attorneys with the following qualifications: (1) a member in good standing in the bar of the state in which he or she is admitted to practice; (2) a minimum of five years criminal practice experience, preferably with significant federal criminal trial experience, which demonstrates an ability to provide zealous representation of consistently high quality to criminal defendants; (3) the ability to effectively administer the office; (4) a reputation for integrity; and (5) a commitment to the representation of those unable to afford counsel. The committee should solicit the views of those in a position to evaluate the performance of the candidates, including, but not limited to judges and magistrate judges of courts in which the candidate has practiced.

A national vacancy notification effort consistent with equal employment opportunity standards should be undertaken in connection with the recruitment of candidates for vacant Federal Public Defender positions. The Defender Services Division of the Administrative Office of the United States Courts should be contacted for advice and financial support in this regard. The committee should screen applications and submit the names of 3 to 5 candidates ranked in order of preference to the district court for comment and recommendation. Pursuant to the provision of the Criminal Justice Act requiring the court of appeals to consider the recommendation of the district court or courts to be served, the recommendations of the

district court shall be included in the committee's report to the court of appeals, along with the committee's response to the district court's comments and recommendations, where appropriate.

When a candidate is selected, the Defender Services Division of the Administrative Office of the United States Courts should be notified promptly of the nominee so that it may initiate any background investigation requested by the court of appeals.

- (6) Reappointment of the Federal Public Defender. The committee should assess the quality of representation, level of commitment and service to clients, and administrative efficiency of the Federal Defender Office prior to deciding whether the reappointment of an incumbent Federal Public Defender is warranted. In this process, it should solicit the views of those in a position to evaluate the performance of the Federal Public Defender as well as the quality of the services provided by the Federal Public Defender Organization, including, but not limited to, judges and magistrate judges of courts served by the organization.

The Defender should be given an opportunity to respond to adverse comments, including adverse comments which would not influence the decision to reappoint, so that the Defender may benefit from constructive criticism. The committee shall not disclose the identity of any person who requests confidentiality, but shall provide the Defender with a general description of the source and nature of the comments.

The committee's report and assessment, including any recommendations from the district court to be served, should be considered by the court of appeals in determining whether to appoint or reappoint a particular individual as the Federal Public Defender.

- B. Community Defender Organizations. The Community Defender Organization shall be an organization, one of the stated purposes of which is to implement the aims and purposes of the Criminal Justice Act. Its bylaws must demonstrate that it is an organization with a professional and fiscal responsibility capable of providing adequate representation pursuant to the Act. The bylaws shall be an inherent part of the plan for the district authorizing a Community Defender Organization. It may operate either on the fee system or by way of grants to be approved by the Judicial Conference.

If a Community Defender Organization which has been approved under the plan for the district court, applies for any grant, it shall do so on a form prepared by the Director of the Administrative Office for the use of the Judicial Conference in considering applications for such grants. The receipt and use of grant funds shall be subject to the conditions set forth in Appendix D. Community Defender Organizations shall agree to and accept these conditions of grant prior to payments being made thereunder.

4.03 Transcripts, Investigative, Expert and Other Services.

A. Procedures for Payment of Transcripts.

- (1) General Authorization. All defender organizations have general authorization to procure transcripts, provided that total expenditures for transcripts (and other services) shall not exceed the budget or grant authorization for the other services budget category.

The limitations set forth in paragraph 3.02 above are inapplicable with regard to the cost of transcripts and do not apply to Federal Public or Community Defender Organizations.

The general authorization provided above includes supplemental funds approved for the other services object classification or funds transferred to that object classification from other classifications.

- (2) Funding Considerations. Once the Federal Public or Community Defender has obligated all funds in the other services object classification, it will be necessary to transfer funds from other object classifications or to seek supplemental funds to cover additional expenditures.

B. Procedures for Payment of Investigative, Expert and Other Services.

- (1) General Authorization. All defender organizations have general authorization to procure investigative, expert and other services as contemplated under subsection (e) of the Criminal Justice Act, as amended, provided that total expenditures for investigative, expert and other services shall not exceed the budget or grant authorization for these specific categories (object classifications).

The limitations set forth in paragraph 3.02 above, do not apply to Federal Public or Community Defender Organizations.

The general authorization provided above includes supplemental funds approved for the expert services object classification or funds transferred to that object classification from other classifications.

- (2) Funding Considerations. Once the Federal Public or Community Defender has obligated all funds in the expert services object classification, it will be necessary to transfer funds from other object classifications or to seek supplemental funds to cover additional expenditures.

4.04 Assignment of Cases. To ensure the effective supervision and management of the organization, Federal Public Defenders and Community Defenders should be responsible for the assignment of cases within their own offices. Accordingly, appointments by the judge or magistrate judge should be made in the name of the Organization (i.e., the Federal Public Defender or Community Defender), rather than in the name of an individual staff attorney within the Organization.

4.05 Apportionment of Cases Between Defender Organizations and the Panel. Recognizing that federal defender organizations consistently furnish high-quality representation to CJA defendants and provide a cost-effective alternative to representation by CJA panel attorneys, the Judicial Conference has recommended that courts take steps to increase the number of cases assigned to federal defender organizations.

In districts currently served by a defender organization these steps should include:

- (1) approval of additional assistant federal defender staff in appropriate circumstances; and
- (2) review and adjustment of district appointment procedures.

- 4.06 Participation as *Amicus Curiae*. Pursuant to governing court rules, Federal Public Defenders and Community Defenders may participate as *amicus curiae* in federal court at the invitation of the court, in death penalty habeas corpus cases, or on behalf of a client as an ancillary matter appropriate to the proceedings.